

### AGENDA ITEM SUMMARY

<b>Meeting Date:</b>	SEPTEMBER 19, 2018
<b>Agenda Category:</b>	CONSENT BUSINESS
<b>Agenda Item Number:</b>	10 C
<b>Subject:</b>	PROFESSIONAL SERVICES AGREEMENT, APPLIED ECOLOGY, INC. (PLANNING DIVISION)

<b>Attachments:</b>	Proposed professional services agreement
---------------------	--

<b>Staff Contact:</b>	Planning Director Bernard
-----------------------	---------------------------

<b>Background:</b>	Applied Ecology provides scientific information, as well as support for ARC ESRI GIS. With this professional services agreement in place, staff will be able to engage in projects with Applied Ecology based on Task Orders presented per job.
--------------------	---

<b>Reference:</b>	Professional Services Agreements
-------------------	----------------------------------

<b>Suggested Action:</b>	Approve the professional services agreement with Applied Ecology, Inc.
--------------------------	--

# Memo

## Planning Division

To: Dr. Brenda Fettrow, City Manager  
From: Alix Bernard, Planning Director  
CC: Lisa Nicholas, City Clerk  
Date: 9/11/2018  
Re: Continuing Services Contract – Applied Ecology

*approved to go  
to Council.  
Dr. Fettrow  
9/11/2018*

---

Comments: Attached is a copy of the proposed professional services agreement with Applied Ecology, Inc.

This contract will be for a period of three years with the potential renewal of two years beyond that.

Applied Ecology provides both scientific information as well as ARC ESRI GIS support. Having a continuing services contract will allow staff to engage in projects with Applied Ecology based on Task Orders presented per job.

## **PROFESSIONAL SERVICES AGREEMENT**

This Agreement, by and between Applied Ecology, Inc., 122 Fourth Avenue, Suite 104, Indialantic, Florida, 32903 (hereinafter called "CONTRACTOR"), and the City of Rockledge, 1600 Huntington Lane, Rockledge, FL 32955 (hereinafter called "CITY"), is effective as of August 11, 2018.

Because the CITY has the need for continuing professional TMDL support, environmental and GIS services, and CONTRACTOR represents that it possesses the knowledge, ability, professional skills, and qualifications to perform this work in an expeditious and economical manner;

Therefore, CONTRACTOR and CLIENT agree as follows:

### **ARTICLE I - TERM OF AGREEMENT**

The term of this Agreement shall be from the date first written until September 30, 2021 with possibility of extension for another two (2) calendar years or until cancelled in writing by either party.

### **ARTICLE II - SCOPE OF WORK**

CONTRACTOR shall perform professional services as separately authorized in writing by Work Orders that shall become part of this Agreement. Work orders can include, but are not limited to, the following professional services:

- TMDL support, which includes modeling, monitoring, meeting attendance, and engineering services
- Environmental and ecological studies
- GIS services, which include data entry, mapping, custom application development, data development, conversion and storage, and staff training
- Field data collection of assets or natural data

Prior to the initiation of services under this Agreement, CONTRACTOR will submit proposed Work Orders that will include scope, compensation, and any special provisions or conditions specific to the services proposed. Work will not commence until the proposed Work Order has been approved and signed by the authorized representative of the CITY. Any services performed outside those specifically set forth in a Work Order are at CONTRACTOR's risk and may not be compensated unless agreed upon by both parties and authorized by written amendment to the Work Order.

### ARTICLE III - COMPENSATION

1. The method of compensation for these services shall be specified in each Work Order. The method may be Fixed Price, Cost Reimbursable, or Unit Price.
2. If it is Fixed Price, the amount shall be specified in the Work Order.
3. If the compensation method is Cost Reimbursable or Unit Price, the fee structure and the maximum cost for these services will be specified in the Work Order and will not be exceeded without authorization from the CITY.
4. Delays not contributed to by CONTRACTOR but which are the result of unforeseen occurrences including, but not limited to, unfavorable weather conditions, partial or complete plant or process shutdowns, strikes, floods, or fires which extend the effort required may constitute a Change-of-Scope. If additional effort results from such delays, an equitable adjustment to the maximum fee will be agreed upon in writing by the CITY and CONTRACTOR.
5. Services performed at the CITY's request beyond that defined by the Work Order Scope-of-Work shall constitute a Change-of-Scope, will be documented by an Amendment to the Work Order, and an equitable adjustment to the Work Order cost will be agreed upon in writing by the CITY and CONTRACTOR.

### ARTICLE IV - METHOD OF PAYMENT

1. Monthly, CONTRACTOR will invoice the CITY for all services rendered under this Agreement. Invoices will be paid within thirty (30) business days of receipt by the CITY. Any unpaid balances for other than disputed charges will draw interest at the lesser of one percent per month or the highest rate allowed by law commencing thirty days after the CITY's receipt of the CONTRACTOR's invoice.
2. When the method of payment is Fixed Price, the monthly invoice shall be for the percent of the total fixed price equivalent to the percent of work completed through the previous month, less previous payments.
3. When the method of payment is Cost Reimbursable, CONTRACTOR's invoice will provide the following information:
  - Total number of hours worked on the project.
  - Total labor costs that include overhead and fee.
  - Listing of other direct charges itemized by type of charge.
  - Any other documentation that may be required by the CITY.
4. When the method of payment is Unit Price, CONTRACTOR's invoice will provide each unit name and its unit price, quantity of each unit provided, total dollars per each unit name and the total amount of the invoice.

## ARTICLE V – INFORMATION MAINTAINED BY PARTIES

In the course of performance of services the parties may transfer information to the City of Rockledge. CONTRACTOR is advised that any information may be subject to the provisions of Chapter 119, Florida Statutes, and could be released to the public. The City of Rockledge will protect any information transferred to it by CONTRACTOR which may fall within the area of any exception to the statute.

Further, CONTRACTOR is required to maintain any documents resulting from this Agreement and shall provide same to the City of Rockledge upon request. Upon completion of this Agreement or any work thereunder, CONTRACTOR will turn over all files relevant to any work performed under this Agreement.

## ARTICLE VI - TERMINATION

The CITY reserves the right to terminate this entire Agreement or any uncompleted Work Order at any time, for any reason, upon written notice to CONTRACTOR. In the event the CITY shall fail to make timely payment of any sum owing and due CONTRACTOR, CONTRACTOR shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement upon written notice to the CITY. In either event, payment shall be due to CONTRACTOR only for those services performed by CONTRACTOR up to the date of receipt of termination plus reasonable costs incurred in terminating the services. Upon termination, CONTRACTOR shall provide and turn over to the CITY all data and analyses prepared up to and including the date of such termination.

## ARTICLE VII - INSURANCE

CONTRACTOR shall at all times during this Agreement maintain such insurance as is generally available to businesses similarly situated and as will protect it from claims under worker's compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damage because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; from claims for indemnification arising out of CONTRACTOR's obligations assumed in Article VIII of this Agreement; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from any action of CONTRACTOR or its employees in its performance of this Agreement. CONTRACTOR shall provide the CITY with a Certificate of Insurance verifying that such insurance is in force and providing that the CITY will be notified at least thirty days prior to cancellation or any material changes in the coverage. The completed Certificate of Insurance shall be Attachment B to this Agreement.

### ARTICLE VIII - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify the CITY, its officers, city council members, agents, consultants, employees, successors and assigns from and against any and all claims, demands, actions, or causes of action, including, but not limited to, any and all costs, expenses, legal fees, and liabilities:

Incurred in and about the investigation and defense thereof, for personal injuries, including death, or property damage suffered by any person, firm, or corporation whatsoever and arising from or in any way connected with the performance of CONTRACTOR, its agents, servants, or employees under this agreement; or

Resulting from any defective pricing, errors in invoicing, or other errors or omissions in pricing, estimation or other actions involving financial information, procedures or practices of any nature whatsoever involving CONTRACTOR, whenever and however discovered, in connection with the work conducted under this Agreement.

### ARTICLE IX - NONDISCRIMINATION

1. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, sex, or national origin.

2. CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical, or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable Executive Orders, including but not limited to Executive Order No. 11246.

### ARTICLE X - STANDARD OF PERFORMANCE

1. CONTRACTOR will deliver its services under this Agreement in a thorough, efficient, and professional manner, promptly and with due diligence and care, and in accordance with the best practices of the profession.

2. If any part of CONTRACTOR's work is found to be defective for reasons attributable to CONTRACTOR, CONTRACTOR shall reperform at its own expense that aspect of the work found defective.

### ARTICLE XI - COMPLIANCE WITH LAWS

1. CONTRACTOR agrees to be bound by, and, at its own cost, comply with all federal, state, and local laws, ordinances and regulations applicable to the CONTRACTOR's work, including, but not limited to, building and zoning laws, environmental laws, land use laws, equal employment opportunity, minority business enterprise, disadvantaged business enterprise and safety.

2. When participating in any activities in connection with this Agreement, CONTRACTOR will comply at its own expense with all health and safety programs required by CITY or law, including but not limited to requiring its employees to attend health and safety training workshops and to use safety equipment and procedures required.

3. The CONTRACTOR shall be liable to and indemnify the CITY for all losses, costs, expenses, legal fees and liabilities attributable to any acts of commission or omission by the CONTRACTOR, its officers, directors, agents, successors and assigns resulting from failure to comply with applicable federal, state and local laws, ordinances and regulations. Such losses, costs, expenses, legal fees and liabilities shall include, but not be limited to any resulting fines, penalties, or expenses of corrective measures.

#### ARTICLE XII - GENERAL CONDITIONS

1. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Florida, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceeding for the enforcement of this contract or any provision thereof shall be instituted only in the courts of the State of Florida and maintained only in any court of competent jurisdiction in Brevard County, State of Florida.

2. In the event any legal or other action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including court costs and a reasonable sum for attorney fees at trial and on appeal.

3. The provisions of this Agreement are severable; and, should one or more provisions be unenforceable, all other provisions will remain in full force and effect.

4. This Agreement, including attachments incorporated herein by reference, represents the entire agreement and understanding between the parties, and any negotiations, proposals, purchase orders, or oral agreements are superseded by this written Agreement and are not intended to be integrated herein.

5. Any supplement or amendment to this Agreement to be effective shall be in writing and signed by the CITY and CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective representatives, each such representative having been first duly authorized so to act, as of the date and year first herein above written.

**APPLIED ECOLOGY, INC.**

By \_\_\_\_\_

Print Claudia Listopad, Ph.D., GISP

Title President

Date \_\_\_\_\_

Federal Employer's Identification Number 26-4651337

**CITY OF ROCKLEDGE**

By \_\_\_\_\_

Print Brenda Fettrow, Ed.D.

Title City Manager

Date \_\_\_\_\_